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W.P.No.22424 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 22424 of 2024

V.S.B. Educational Trust
Rep. by its Trustee Vijay,
204, Dharapuram Road,
Kangayam, Tiruppur District-638 701. Petitioner

Vs

1. The State of Tamil Nadu
Rep. by the Secretary,
Town and Country Planning
Fort St. George, Chennai-600 009.

2. The Director
Town and Country Planning,
2nd, 3rd & 4th Floor, C & E Market Road,
Koyambedu, Chennai-600 107.

3. The Deputy Director
Coimbatore District Town and Country
Planning Office,
Ground Floor and First Floor,
Door No.50, FCI Road,
Gandhimanager, Ganapathy,
Coimbatore-641 004.

4. The President
Solavampalayam Panchayat,
Solavampalayam,
Kinathukadavu-642 109. Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order of the 2nd respondent in Na.Ka. No.72/2023-TCP3 dated 08.07.2024 quash the same and direct the respondents to grant planning permission to the petitioner as per the petitioner's applications dated 25.10.2012 within a stipulated time without insisting on the petitioner handing over the O.S.R. land to the panchayat

For Petitioner : Mr.A.R.L.Sundaresan
Senior Counsel
for Mr.L.Palani Muthu

For Respondents : Mr.N.Naveen Kumar
Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 08.07.2024, thereby rejected the request made by the petitioner for issuance of planning permission.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner has established VSB College of Engineering Technical Campus, Coimbatore. It applied to the fourth respondent Panchayat for approval of building construction on



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27.07.2011. It was forwarded to the Town and Country planning authorities. After approval for construction of A and B Blocks with ground plus one floor, the petitioner submitted an application to start VSB College of Engineering Technical Campus, Coimbatore. In the year 2012, initially the petitioner submitted a proposal to the fourth respondent for approval of additional constructions such as two hostels i.e., one for boys and another for girls. It was given concurrence by the second respondent for additional constructions subject to certain conditions.

4. However, the matter was kept pending and the second respondent insisted the petitioner for handing over of the land, earmarked for Open Space Reservation (hereinafter referred to as “OSR”) to the Panchayat. Therefore, the petitioner made representation as per the Government order in G.O.Ms.No.161, Housing and Urban Development Department, dated 26.06.2013, whereby it is clearly held that the OSR land could be kept open to the sky without any construction on condition that the space should be utilised only as a park and not as a playground by the concerned institution. However, the said request was rejected by the second respondent, by its proceedings dated 21.07.2014 on the



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ground that the said Government Order would not be applicable to the case of the petitioner. Therefore, the petitioner constrained to file a writ petition before this Court in W.P.No.6790 of 2023 challenging the order passed by the second respondent. This Court, by an order dated 03.03.2023, allowed the writ petition and held that OSR land in the petitioner's institution shall be kept open to the sky without any construction with further condition that it shall be utilized only as a park and not as a playground and remitted the matter back to the second respondent for fresh consideration.

5. Accordingly, the petitioner submitted an affidavit of undertaking to the effect that the OSR land shall be kept open to the sky without any construction and that it would be utilised only as a park and not as a playground. On receipt of the same, the third respondent directed the petitioner to pay a sum of Rs.40,59,400/- under various heads to consider the approval for additional construction. The petitioner had paid the said amount. Once again the petitioner was directed to pay interest and the same was also paid by the petitioner. Even then the second respondent, by an order dated 08.07.2024, rejected the claim made by the petitioner on the very same ground that the Government



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Order is not applicable to the case of the petitioner, since as per the Government Order, there is no retrospective effect. The OSR land in respect of Educational Institutions which is already approved prior to the Government Order is unchangeable.

6. The learned Senior Counsel appearing for the petitioner would submit that the second respondent has committed contempt of the order passed by this Court in W.P.No.6790 of 2023 dated 03.03.2023. He also pointed out that as per the Government order in respect of educational institutions for whom OSR regulation is applicable, the OSR shall be earmarked and kept open to sky without any construction with the condition that the OSR area should be utilized only as a park and not as a playground by the concerned institutions.

7. The learned Government Advocate appearing for the respondents would submit that the second respondent may be directed to consider the application submitted by the petitioner afresh as directed by this Court in W.P.No.6790 of 2023 dated 03.03.2023.



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8. The order passed by this Court in W.P.No.6790 of 2023 dated 03.03.2023, revealed that the writ petition was allowed and the petitioner was directed to file an affidavit of undertaking before the second respondent that the petitioner shall keep the OSR land open to the sky without any construction and the said OSR shall be utilised only as a park, not as a playground. On filing of such affidavit of undertaking, the second respondent was directed to consider the application for planning permission, in the light of G.O.Ms.No.161, Housing and Urban Development [UD4 (3)] Department, dated 26.06.2013. Whereas, on the application submitted by the petitioner, prior to the said Government order, the petitioner was granted permission on certain conditions.

9. A perusal of the Government order in G.O.Ms.No.161, Housing and Urban Development [UD4 (3)] Department, dated 26.06.2013, reveals that it doesn't say that it is applicable only prospectively. That apart, this Court subsequently directed the second respondent to consider the application submitted by the petitioner on filing of an undertaking affidavit as per G.O.Ms.No.161, Housing and Urban Development [UD4 (3)] Department, dated 26.06.2013. Without considering the same, the second respondent rejected the request made by the petitioner by showing other ground.



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10. In view of the above, the order passed by the second respondent dated 08.07.2024 cannot be sustained and it is liable to be quashed. Accordingly, it is hereby quashed. The second respondent is directed to grant planning permission to the petitioner, as per the request made by the petitioner dated 25.10.2012 in the light of G.O.Ms.No.161, Housing and Urban Development [UD4 (3)] Department, dated 26.06.2013, within a period of two weeks from the date of receipt of a copy of this order without insisting the petitioner to hand over the OSR land to the Panchayat.

11. In the result, this writ petition stands allowed. No costs.

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Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN, J.

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To

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